

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JENNIE COURTNEY, ETC.,)
vs.)
Plaintiff,)
vs.) Civil Action No.: 2:06-CV-00600-MHT
ANTHONY CLARK, et al.,)
Defendants.)

HOLLIS & SPANN, INC.'S MOTION FOR SUMMARY JUDGMENT

Comes now the defendant Hollis & Spann, Inc. ("Hollis & Spann") and moves this Honorable Court to enter, pursuant to Rule 56 and 54(b) of the Federal Rules of Civil Procedure, a summary judgment in this defendant's favor dismissing this action and each count thereof on the grounds that there is no genuine issue as to any material fact and this defendant is entitled to a judgment as a matter of law.

More particularly, summary judgment should be granted for the following reasons:

1. As a matter of law, the complaint, as amended, fails to state a claim against Hollis & Spann upon which relief can be granted;
2. There is insufficient evidence that Hollis & Spann is guilty of any wrongdoing which proximately caused or contributed to cause the death of Mr. Courtney;
3. As a matter of law, contractor Hollis & Spann, who completed the construction of the Covington County jail in 1996 in accordance with the architect's plans and specifications, owed no duty to protect Mr. Courtney from a 2005 escape;

4. As a matter of law, Hollis & Spann owed no duty to protect Mr. Courtney from criminal acts of a third party;

5. As a matter of law, the plaintiff cannot prove that Hollis & Spann is guilty of any act or omission which proximately caused or contributed to cause Mr. Courtney's death;

6. As a matter of law, the plaintiff's claims are barred by the statute of limitations;

7. As a matter of law, the plaintiff's claims against Hollis & Spann are barred by the doctrine of res judicata and collateral estoppel due to a favorable summary judgment ruling entered in Hollis & Spann's favor in a earlier action seeking recovery for wrongful death after a 2002 escape.

This motion is based on the pleadings in this case; the Defendant Hollis & Spann's Narrative Statement of Undisputed Facts and Brief in Support of Motion for Summary Judgment filed simultaneously herewith; the Affidavit of John Eiland, which is attached to the Narrative Statement as Exhibit "A"; the Certificate of Substantial Completion which is attached to the Narrative Statement as Exhibit "B"; certified copies of the Covington County, Alabama Grand Jury Inspection Reports from June 10, 1996 through June 16, 2006, attached to the Narrative Statement as Exhibit "C"; and certified copies of excerpts from Civil Action No. CV-04-251 styled "Angela E. Fowler, etc., v. Sheriff Anthony Clark, et al." filed on November 2, 2004, in the Circuit Court of Covington

County, Alabama, which are attached to the Narrative Statement as Exhibit "D."

WHEREFORE, THE PREMISES CONSIDERED, the defendant requests this Honorable Court to enter summary judgment in favor of this defendant dismissing this action and each count thereof and making said judgment final on the express grounds that there is no just reason for delay in entry of said judgment.

/s/Steven K. Herndon

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CERTIFICATE OF SERVICE

I hereby certify that I have on this the 8th day of January, 2007 electronically filed the above and foregoing with the Clerk of the Court using the CM/ECF system which will send notification of each filing to the following counsel of record and I have placed a copy of same in the United States mail, postage prepaid and properly addressed to each defendant inmate this 8th day of January, 2007:

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